THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12868 of 2007

25.6.2007

Between:

Hafeezunnisa Begum, W/o.Late Mirza Wajid Baig
And others

… Petitioners

AND

The Joint Collector, Ranga Reddy District,
Office at Lakdikapool, Hydeabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The petitioners herein challenge the orders of the first respondent in Case No.D/35/2006 dated 31.3.2007 whereby and whereunder, while exercising powers under Section 9 of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity), first respondent set aside the order of the second respondent dated 30.7.2005 and remanded the matter to second respondent for fresh enquiry in accordance with the provisions of the Act.

The first petitioner is the mother and petitioners 2 to 7 are her sons and daughters. They allege that Mirza Ali Baig was pattadar of agricultural land admeasuring 87.08 gts in survey Nos.342 to 344, 349, 350 etc., situated in Maheswaram Village in Ranga Reddy District. After death of original owner, Mirza Ibrahim Baig, who is statedly grandfather of petitioners 2 to 7 succeeded to the property. After his demise, his sons, Mirza Wahed Baig, Mirza Rahim Baig and Mirza Baquar Baig inherited the property. Mirza Wahed Baig died leaving behind his son, Mirza Wajid Baig, who is the husband of first petitioner and father of petitioners 2 to 7. It is alleged that after death of Mirza Wahed Baig, predecessor of petitioners and respondents 7 to 11 succeeded to the property. It is further alleged that Mirza Raheem Baig is survived by respondents 5 and 6 and Mirza Baquar, and Ali Baig is survived by respondents 12 to 19.

It is the case of the petitioners that after death of Marza Ibrahim Baig, his three sons had 1/3rd share each in the property. But respondents 12 to 19 got the entire property mutated in their favour in revenue records in 1991. Mirza Wajid Baig – immediate predecessor of the petitioners – and respondents 5 to 11 filed appeal being

No.A2/2442/2005 before the second respondent. While the appeal was pending, its appears, there was a compromise between respondents 5 to 11 and Marza Wajeed Baig on one hand and respondents 12 to 19 and their mother Hayathunnisa Begum on the other hand. In terms of memorandum of compromise, second respondent disposed of the appeal by order dated 30.7.2005. Fourth respondent then preferred a revision before the first respondent under Section 9 of the Act. In the said revision being Case No.D5/35/2006, father of petitioners 2 to 7 was shown as third respondent. He died on 28.5.2006. Therefore, petitioners herein who statedly represent his estate were brought on record before first respondent as legal representatives. First respondent, however, passed orders dated 31.3.2007 in Case No.D5/35/2006, setting aside the order of second respondent and remanding it for fresh enquiry in accordance with the Act.

Learned Counsel for the petitioner submits that though Mirza Wajeed Baig died during the pendency of the revision petition, fourth respondent did not bring the petitioners as legal representatives and therefore they had no opportunity to face the enquiry by the Joint Collector. According to the learned Counsel, the order passed by the first respondent is erroneous because the second respondent passed orders in accordance with Sections 4 and 5 of the Act and the said order does not warrant any interference in exercise of powers under Section 9 of the Act. **Opposing the writ petition** learned Assistant Government Pleader for Revenue (General-T) submits that the Joint Collector came to the conclusion that the Revenue Divisional Officer (RDO), Hyderabad East, virtually partitioned the property among the co-sharers, which is not permissible under the Act and therefore the remand is justified.

The first respondent while setting aside the order of the RDO dated 30.7.2005 and remanding the matter for fresh enquiry observed as under.

> The impugned order has been examined. Vide the impugned order the Revenue Divisional Officer has passed orders in terms of compromise memo filed by both the parties to the appeal and ordered rectification of entries in revenue records in terms of compromise memo. The compromise memo apparently speaks of partition of the appeal schedule property. It is doubtful whether revenue authorities in discharge of functions under A.P.Rights in Land and Pattadar Pass Books Act can take cognizance of such a compromise memo, which in effect provides for partition of property. In **Basagouda v Assistant Commissioner, Chikkodi**[1], the High Court of Karnataka has held that Revenue Authorities

> cannot order partition of properties. As such the impugned order which is founded on a compromise memo which effectively provides for partition of property suffers from infirmity and is liable to be set aside.

As seen from the above, it is not a case where the parties partitioned the property under a valid registered document and then approached the recording authority/appellate authority under the Act for amendment or alterations of record of rights. It is a case where the parties filed a compromise memo agreeing to partition the property. In such a case being the public authority, RDO could not have accepted an unregistered partition deed, which requires registration under the Stamp Act, 1899, read with Schedule IA. Be it a partition list or a memorandum of compromise requires registration under the Stamp Act. Therefore, the first respondent is justified in setting aside the order of the second respondent and remanding the matter for fresh enquiry. Insofar as the submission that even after death of their predecessors, petitioners were not made parties and therefore the order is nullity is without substance. Admittedly, apart from Mirza Wajeed Baig so many other successors in title claiming through Mirza Ibrahim Baig were parties before the first respondent. None of them even raised objection on this ground. Therefore, the order cannot be faulted on that ground. Now that the matter is remanded, liberty is given to the petitioners to approach the RDO, get them impleaded in the place of Mirza Wajeed Baig and agitate for their rights. This Court also observes that the second respondent may dispose of the matter within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

June 25, 2007.

NOTE:

Dispatch order copy by 10.7.2007.

(By order)

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[1] 1999(5) KLD 145